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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/531,138	09/16/2005	Nicholas Andrew Murray Drought	920602-99275	4556

23644 7590 12/31/2007  
BARNES & THORNBURG LLP  
P.O. BOX 2786  
CHICAGO, IL 60690-2786

EXAMINER
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KUMAR, RAKESH

ART UNIT	PAPER NUMBER
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3651

NOTIFICATION DATE	DELIVERY MODE
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12/31/2007

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patent-ch@btlaw.com

<b>Office Action Summary</b>	Application No. 10/531,138	Applicant(s) DROUGHT ET AL.	
	Examiner Rakesh Kumar	Art Unit 3654	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 October 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3, 5-9 and 11-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-9 and 11-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 April 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **FINAL REJECTION**

### ***Information Disclosure Statement***

The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered. In particular, see specifications page 1, line 12 (The reference in question is US 5791513 which is stated in the Specifications but is not included in the Information Disclosure Statement (IDS) form submitted 03/20/2006, it is suggested the above mentioned reference be included in the IDS form).

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3,5-9,11,15 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Vierkotter (0305895A1).

Referring to claims 1 and 16. Vierkotter discloses an apparatus for releasing tablets (Figure 1) from a blister pack (3) having a plurality of tablets (4) contained in corresponding blisters, the apparatus comprising abutment means (13), receiving means (including members 2 and 5 at dispensing end) for receiving a blister pack (3) with any selected one of a plurality of blisters of the pack in registry with the abutment means (13), the receiving means (including 2 and 5) comprising a pair of opposed jaws (see Figure 1), the jaws (including member 13 and base 7) being moveable relative to one another, either one of the abutment means (13) and the receiving means being moveable (see Figure 4 and 5) to cause a collapsing force to be exerted on a selected blister (3) thereby to release a tablet (4) from the blister (3), wherein the apparatus includes biasing means (12; Figure 2) for urging the receiving means into engagement with the blister pack (see Figure 1), and the receiving means is so arranged that said engagement releasably retains, and locates (see member 9; Figure 4), the blister pack (3) in position relative to the abutment means (13) prior to the release of the tablet (4), and wherein the biasing means (12) is operable to bias the jaws into a neutral position (initial position; Figure 1), in which they are spaced apart so as to be able to receive a blister pack (3).

Referring to claims 2,6,7 and 16. See claim 3 and 4. Vierkotter discloses an apparatus for releasing tablets (Figure 1) from a blister pack (3),

wherein the abutment means (13) is moveable towards a blister of a pack (3) retained in the receiving means (including 2 and 5). In addition, the biasing means (12) is integrally formed with the upper jaw (2).

Referring to claim 3. Vierkotter discloses an apparatus for releasing tablets (Figure 1) from a blister pack (3),

wherein the receiving means (including 2 and 5) is arranged to receive a blister pack (3) so that the selected blister (4) faces the abutment means (13), the latter being operable to exert said collapsing force by directly engaging the blister (4; Figure 5).

Referring to claim 5. Vierkotter discloses an apparatus for releasing tablets (Figure 1) from a blister pack (3),

wherein one of the jaws (2) is so shaped as to locate (see member 9) a selected blister (4) in registry with the abutment means (13), and has a recess of a complimentary shape (Figure 4) to that of a blister (4).

Referring to claims 8 and 9. Vierkotter discloses an apparatus for releasing tablets (Figure 1) from a blister pack (3),

wherein the biasing means comprises a resiliently flexible connecting arm (see U shaped structure at opposite to the dispensing end including U shaped member including 2 and 5; Figure 4).

Referring to claims 11 and 15. Vierkotter discloses an apparatus for releasing tablets (Figure 1) from a blister pack (3),

wherein the biasing means (13) is operable to bias the jaws into a neutral position (see position of jaws in Figure 4), in which they are spaced apart so as to be able to receive a blister pack (3).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vierkotter.

Referring to claims 12-14. See claims above. It would have been an obvious matter of design choice to use a compressible material as a biasing means, since applicant has not disclosed a compressible material solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with a spring based biasing means as disclosed in the apparatus Vierkotter in Figure 1.

It would have been further obvious to one of ordinary skill in the art at the time the invention was made to have modified apparatus of Vierkotter and include a compressible protective sleeve around the biasing member (26) thus preventing debris from entering the dispensing chamber.

### ***Response to Arguments***

Applicant's arguments filed 10/03/2007 have been fully considered but they are not persuasive.

Applicant's arguments with respect to claims 1-3,5-9 and 11-16 have been considered but are moot in view of the new ground(s) of rejection. See modified rejection above.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

Application/Control Number:  
10/531,138  
Art Unit: 3654

Page 7

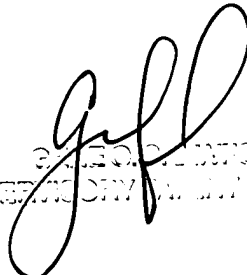
the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rakesh Kumar whose telephone number is (571) 272-8314. The examiner can normally be reached on 8:00AM - 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Crawford can be reached on (571) 272-6911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

RK

  
G. CRAWFORD  
SUPERVISOR